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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOANN RUVOLO, STEFAN B. EDLUND, and
DANIEL ALEXANDER FORD

_____

Appeal 2007-4378
Application 09/500,439
Technology Center 3600

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Decided: February 6, 2008

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ruvolo, et al. (Appellants) seek our review under 35 U.S.C. § 134 of
the final rejection of claims 1, 2, 4, 5-15, 17-26, and 28-37. We have
jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.[1]

THE INVENTION

The Appellants' invention is to a method and system for automatically selecting whom a person should keep in contact with and displays such selections to the person. (Specification 2:4-6.) The system comprises a user request, timer module, request processor, search/select module, user preferences, contact list, selected candidates, display module, and display. (Specification 4:16-18.) The system is either started manually or automatically and searches for contacts based on the user's preferences. (Specification 4:19-22.) In the process the user with the system establishes user preferences (Specification 8:19-20), stores a set of contacts (Specification 8:7-13), initiates a search and selection of possible contacts based on the criteria set forth in the user preferences (Specification 9:14-22), and as such displayed are the potential contacts retrieved from the search and selection process (Specification 10:7-17).

Claims 1, 2, 5, and 8, reproduced below, are representative of the subject matter on appeal.

> 1. A computer-based method of dynamically presenting
> potential contacts to a user comprising the following
> steps:

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[1] Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Nov. 1, 2004), Reply Brief ("Reply Br.," filed Mar. 28, 2005), the Examiner's Answer ("Answer," mailed Jan. 27, 2005), and the Final Rejection ("Final Rejection," mailed Jul. 2, 2004).

retaining user preferences, wherein said user preferences
comprise any of, or a combination of: professional or
personal contacts, preference on initiating the searching
step, time-based references, select algorithms, or
maximum number of candidates to select;
retaining a list of possible contacts, said list comprising at
least identifying information and available images of said
contacts;
automatically initiating searching said list of possible
contacts to select at least one potential contact based on
said user preferences,
retaining said at least one potential contact selected during
said search, and
displaying to the user an available image or other
identifying information of said at least one potential
contact identified during said automatic searching to
automatically remind the user to stay in touch with said
at least one potential contact.

2. A computer-based method of dynamically presenting
potential contacts to a user, as per claim 1, wherein said user
preferences comprise either preferences input by the user or
pre-selected default preferences.

5. A computer-based method of dynamically presenting
potential contacts to a user, as per claim 1, wherein said
automatic searching step is initiated automatically by said
time-based reference.

8. A computer-based method of dynamically presenting
potential contacts to a user, as per claim 1, wherein said
selection of a potential contact in said search step is either
random or based on a select algorithm.

THE PRIOR ART

The Examiner relies upon the following as evidence of

unpatentability:

Kennedy   US 5,831,611   Nov. 3, 1998

Xcontact
     http://web.archive.org/web/1999020304059/http://www.chez.com/svs/
XcontactUS.html, Jan 1, 1996.

THE REJECTIONS

The following rejections are before us for review:

1. Claims 1, 2, 4-15, 17-26, and 28-37 are rejected under 35 U.S.C.

    § 103(a) as being unpatentable over Kennedy in view of Xcontact.

ISSUES

The issue is whether the Appellants have shown that the Examiner

erred in rejecting claim 1, 2, 4-15, 17-26, and 28-37 as being unpatentable

over Kennedy and Xcontact.[2] This issue turns on whether the Examiner

established a prima facie case of obviousness over Kennedy and Xcontact.

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported

by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849

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[2] Only those arguments actually made by Appellants have been considered
in this decision. Arguments that Appellants could have made but chose not
to make in the Briefs have not been considered and are deemed to be
waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary

standard for proceedings before the Office).

The scope and content of the prior art

1. Kennedy discloses a system for creating and executing business

    contact communication processes (such as prospective sales calls) by

    means of graphical user interface programs. (Kennedy, col. 1, ll. 11-

    13.) Kennedy explains businesses are now able to keep large amounts

    of information regarding their business contacts in their databases and

    through search and sort routines are able to retrieve specific requested

    portions of that information. (Kennedy, col. 1, ll. 33-37.) Kennedy

    mentions two functionalities of computerized business contact

    management systems. One category of functionality is the

    maintenance of the database in order to store and retrieve the contact

    information. (Kennedy, col. 1, ll. 38-48.) The other category of

    functionality mentioned is the maintenance of an appointment

    calendar, scheduling future appointments, and automatic follow-up of

    reminders. (Kennedy, col. 1, ll. 48-59.) Kennedy identifies the

    problems with these systems are (1) in the development of the

    communication protocols for business contacts (i.e., programming the

    system with the programming tools provided by the system) and (2)

    implementation of the programs developed with the existing database

    the business maintains containing its business contains. (Kennedy,

    col. 1, l. 60 to col. 2, l. 9.) As such, Kennedy discloses a graphical

    user interface for communication process (protocol) development and

    implementation. Kennedy's system contains two parts: a process

    editor and a process manager. The process editor provides a set of

graphically depicted events arranged upon a graphical user interface
and graphical relation indicators for visually depicting the
relationships between said graphically depicted events. (Kennedy,
col. 2, ll. 32-38.) The process manager executes the set of events
corresponding to the graphically depicted events that have been
complied into a particular communication protocol. (Kennedy, col. 2,
ll. 39-46.) Kennedy's disclosure is divided into four sections: (1)
describing the graphic user interface for the process editor, (2)
descriptions of the data structures, (3) using the graphic user interface
described in section one to build a communication process using the
data structures described in section two, and (4) describing the
execution (using the process manager) of a communication process
built by using the graphical user interface found within the process
editor. The first three sections are focused on the process editor while
the fourth section is focused on the process manager. Starting in
column 4 and ending in column 10 (Section 1), Kennedy describes the
graphic user interface for the process editor that a programmer would
use to build or modify a communication process or protocol for a
business contact or contacts. Kennedy starting in column 11 and
ending column 13, line 23 (Section two) describes the data structures
associated with an event (e.g., letter generation, form generation,
reminder, e-mail, dialog, phone call, question). Kennedy describes in
column 13, line 24 through column 16, line 20 (Section 3) the process
for graphically depicting a communication process to be implemented.
Basically, the process a programmer uses is a drag-and-drop oriented
approach to programming the system by selecting the graphical

representations of the desired events to occur in a particular order and fill in any associated data. Kennedy from column 16 to the beginning of the claims (Section 4) describes running processes programmed with the information within a business' database. As an example, Kennedy discloses a communication process that was programmed to generate two letters within a span of days followed by a telephone call to a selected prospect within the database.

2. Xcontact teaches adding an image of a point of contact within an electronic address and calendar book software program.

The level of skill in the art

3. Neither the Examiner nor Appellants have addressed the level of ordinary skill in the pertinent arts of communication process management. As such, we will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d. 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown.'") (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

4. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

ANALYSIS

We have carefully reviewed the prior art used in the rejections (see Finding of Facts 1 and 2) and the rejections on appeal (Answer, 4-6) in light of the arguments of the Appellants (App. Br. 4-10 and Reply Br., 2-8) and the Examiner (Answer, 7-11). As a result of this review, we have reached the conclusion that the applied prior art does not establish the prima facie case of obviousness of the claimed subject matter. The claims are directed to a process and system for initiating the maintenance of points of contacts. Kennedy is directed to the development of creating and executing business contact communication processes by way of a program that uses a graphical user interface and drag-and-drop method of building these processes with the graphical objects provided by the system. (Finding of Fact 1.) Xcontact is directed to an electronic address and calendar software program that has the capability of adding images to the contact. (Finding of Fact 2.) The disclosure of Xcontact cannot ameliorate the shortcomings of Kennedy. Likewise, Kennedy's disclosure cannot ameliorate the shortcomings of Xcontact. We fail to see where Kennedy discloses, teaches, or suggests a method and system that automatically searches through a list of points of contact, based on a set of user preferences, to which the user has not stayed in contact with and automatically generates a reminder along with an available image of a potential point of contact so as to remind the user to stay in contact with the potential point of contact. As such, we are constrained not to sustain the Examiner's rejections on appeal.

CONCLUSIONS OF LAW

The rejections of claims 1, 2, 4-15, 17-26, and 28-37 are not sustained.

DECISION

<u>REVERSED</u>

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